

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: John Rayson, 954 566 8855

PREPARED BY: Lauren Rice

SUBJECT: Resolution

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE INDEMNIFICATION AGREEMENT TO THE TOWN OF DAVIE FROM WEDGEWOOD COVE AT SHENANDOAH HOMEOWNERS ASSOCIATION, INC. FOR THEIR OPERATION OF A PRIVATE ROAD.

REPORT IN BRIEF: Wedgewood Cove at Shenandoah Homeowners Association owns a private road known as Oak Ridge Drive. The owners did not install traffic demarcations for aesthetic reasons. The Town of Davie has not approved the lack of traffic demarcations. The owners have agreed to indemnify and hold harmless the Town of Davie from any liability whatsoever in order to have the Town close out owner's permits. The agreement has been reviewed by the Town Attorney and recommended for approval by Town Council.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account name and number:

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve resolution

Attachment(s): Resolution, Attorney Poliakoff Letter, Indemnification Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA ACCEPTING THE INDEMNIFICATION AGREEMENT TO THE TOWN OF DAVIE FROM WEDGEWOOD COVE AT SHENANDOAH HOMEOWNERS ASSOCIATION, INC. FOR THEIR OPERATION OF A PRIVATE ROAD.

WHEREAS, Wedgewood Cove at Shenandoah Homeowners Association, Inc., hereinafter called “owner,” owns in fee simple a private road known as Oak Ridge Drive; and

WHEREAS, owner has seal coated the private road but did not install traffic demarcations including a stop bar and the Town of Davie has not approved of the lack of traffic demarcations; and

WHEREAS, owner has decided not to install demarcations for aesthetic reasons but agrees to indemnify and hold harmless the Town of Davie from any liability whatsoever in order to have the Town of Davie close out owner’s permits; and

WHEREAS, owner’s attorney has submitted an Indemnification Agreement to the town of Davie regarding the private road to be maintained by owners which has been reviewed by and recommended for approval to the Town Council by the Town Attorney for Davie

NOW, THEREFORE, BE IT RESOLVED BY TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AS FOLLOWS:

SECTION 1: The Town of Davie does accept the Indemnification Agreement offered by Wedgewood Cove covering Oak Ridge Drive, a private road owned by Wedgewood Cove.

SECTION 2: The Town of Davie agrees to close out the Wedgewood Cove permits upon execution and recordation of the Indemnification Agreement.

SECTION 3: This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF ____, 2009

MEMBER
ATTEST:

MAYOR / COUNCIL

TOWN CLERK

APPROVED THIS ____ DAY OF ____, 2009

**BECKER &
POLIAKOFF**

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3111 STIRLING ROAD
FORT LAUDERDALE, FL 33312
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**Emerald Lake Corporate Park
3111 Stirling Road
Fort Lauderdale, Florida 33312-6525
Phone: (954) 987-7550 Fax: (954) 985-4176**

**Mailing Address:
P.O. Box 9057
Ft. Lauderdale, FL 33310-9057**

**Reply To:
Fort Lauderdale
Keith M. Poliakoff, Esq.
Direct dial: (954) 985-4183
KPoliaKoff@becker-poliakoff.com**

July 27, 2009

John C. Rayson, Esquire
Law Offices of John C. Rayson
2400 E. Oakland Park Boulevard
Fort Lauderdale, FL 33306

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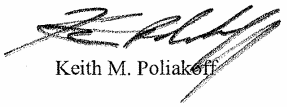
Re: Indemnification Agreement - Town of Davie/Wedgewood Cove

Dear John:

In furtherance of our email correspondences, enclosed is an executed Indemnification Agreement relating to the striping of the stop sign area located on a private road owned by Wedgewood Cove which you previously approved. Please sign the Agreement and forward it on to the Town of Davie for Town official's signatures and notarization. If you would like me to have it recorded, please return the original to me; otherwise, we will be happy to send you a check for recordation.

Thank you for your attention to this matter.

Very truly yours,


Keith M. Poliakoff

KMP/cb
Enclosure
ACTIVE: 2650665_1

LEGAL AND BUSINESS STRATEGISTS

MEMBERS OF CONSULEGIS AN INTERNATIONAL ASSOCIATION OF LAW FIRMS AND NETWORK OF LEADING LAW FIRMS

This instrument prepared by
and record and return to:
Keith M. Poliakoff, Esq.
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312

**Indemnification Agreement Relating
To the Striping of the Stop Sign Area, Located on a Private Road
Owned by Wedgewood Cove**

THIS INDEMNIFICATION AGREEMENT, ("Agreement") made and entered into this ____ day of June, 2009, by and between WEDGEWOOD COVE AT SHENANDOAH HOMEOWNERS ASSOCIATION, INC., ("Owner"), whose mailing address is PO BOX 550142 DAVIE FL 33355-0142, and the TOWN OF DAVIE ("Town").

The following recitals of fact are a material part of this instrument:

1. Owner owns, in fee simple, Oak Ridge Drive, a private road, situated at the exit of Wedgewood Cove to the Shenandoah Parkway in the Town of Davie, Florida, described on the survey Exhibit "A" attached hereto and incorporated herein by reference ("Owner's Property").
2. Owner recently seal coated Oak Ridge Drive, and is awaiting final approval from the Town.
3. The Town has not approved the final seal coat since Owner did not install traffic demarcations, mainly a stop bar, at the exit of Wedgewood Cove to the Shenandoah Parkway.
4. Owner has contended that there were never traffic demarcations on its private road, that these demarcations would affect the aesthetics of the community, that it would be an unnecessary cost burden, and that demarcations placed on brick pavers, regardless of material, will never last.
5. Town and Owner have agreed that provided that Owner holds Town harmless for its lack of pavement demarcations, that it will close out the permit for this matter.

NOW, THEREFORE, in consideration of the premises and the sum of Ten (\$10.00) Dollars and other good and valuable consideration, the respective receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Owner acknowledges and agrees that the Town, its officers, agents, and employees shall not be held responsible or liable for any reason as a result of Owner's failure to install traffic demarcations, mainly a stop bar, at the intersection of Wedgewood Cove and Shenandoah Parkway.

2. **Indemnification:** Owner acknowledges and agrees that any liability of Town, its officers, agents, and employees for personal injury or damages caused, proximately or otherwise, by the failure to install the traffic demarcations indicated above, or in any way connected with the failure to install the traffic demarcations, shall be borne solely by the Owner and Owner agrees to indemnify, defend, protect same and hold Town, its officers, agents, and employees harmless from and against any and all costs, losses, liabilities and expenses arising in connection with any liability, claim, threatened claim, action, lawsuit, damages or any other matter which Town would be required to reply and/or defend.

3. **Insurance:** Owner shall secure and maintain, at its own expense, and shall keep in effect during the full term of this Agreement, a policy or policies of insurance covering all acts, activities and omissions in any way arising out of this Agreement and Owner's Property.

3.1 This insurance requirement shall not relieve or limit the liability of Owner. Town does not in any way represent the type and amount of insurance required and does not in any way represent that such amount is sufficient or adequate to protect Owner's interests or liabilities but is merely a requirement established by the Town.

4. Owner warrants and represents that Owner has good and marketable fee simple title to the Oak Ridge Drive, subject only to the permitted encumbrances recorded in the Public Records.

5. The failure of any party to this Agreement to abide by the covenants, conditions, and declarations herein shall constitute an event of default and may be enforced by the Town of Davie, or such other governmental entity with jurisdiction over the property.

6. Amendment. This Agreement may not be altered, changed, or amended except by an instrument in writing, executed by all of the owners of any right, title, or interest in the property, including any affected governmental entity, and approved by the Town of Davie.

7. Recording. This Agreement shall be recorded in the public records of Broward County, Florida, at Owner's expense, and all of the provisions of this instrument shall run with the property described herein and shall remain in full force and effect for perpetuity and are binding on all parties and persons acquiring any right, title, or interest in the property.

8. Enforcement. The Town of Davie, or any other affected governmental entity, and the owners of any right, title, or interest in the road are the beneficiaries of this Agreement and as such, may enforce these restrictive covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of this Agreement. The Town of Davie, and any affected governmental entity shall be entitled to specific performance of the covenants provided herein in addition to the remedies available at law or in equity. The prevailing party in any such action shall be entitled to reasonable costs and attorneys' fees and costs in all tribunal levels.

9. Choice of Law & Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction and venue of an appropriate Court of competent jurisdiction of Broward County, Florida.

10. Integration. This Agreement is intended to be a complete and entire statement of the parties hereto with regard to the matters contained herein and shall supersede any prior arrangement or agreement of the parties (oral or written) with respect to the subject matter hereof. This Declaration of Restrictive Covenants may not be modified or amended except by an instrument in writing signed by the parties hereto.

11. Severability. If any term, condition or provision of this Agreement shall be declared to any extent invalid or unenforceable, the remainder of this Agreement, other than the term, condition or provision held invalid or unenforceable, shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

12. Binding Effect. Owner declares that all of the real property described herein shall be held, transferred, sold, conveyed, and occupied subject to the covenants, declarations, understandings, agreements and restrictions set forth herein, all of which shall run with the property and shall be binding upon all parties having any right, title, or interest in said property or any part thereof, their heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date and year first above written.

WITNESSES:

William Gonzalez
Michelle Patricia Harris

OWNER:

By: David De La Espriella
David De La Espriella

Dated: July 22, 2009

TOWN OF DAVIE

By: Judy Paul, Mayor
Judy Paul, Mayor

ATTEST:

Russell Muniz, CMC, Town Clerk

By: Gary Shimun, Town Administrator
Gary Shimun, Town Administrator

Approved as to Form and Correctness

John Rayson
John Rayson, J.D., Town Attorney

Dated: _____, 2009

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this 22 day of July, 2009,
by DAVID DE LA ESPRIELLA, who is personally known to me, or produced
_____ as identification, and he did/did not take an oath. If no type of
identification is indicated, the above-named person is personally known by me.



Mauveit Rattigan
Notary Public

My Commission Expires: August 1, 2010

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this ____ day of _____, 2009,
by JUDY PAUL, who is personally known to me, or produced _____ as
identification, and she did/did not take an oath. If no type of identification is indicated, the above-
named person is personally known by me.

Notary Public

My Commission Expires:

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this ____ day of _____, 2009,
by GARY SHIMUN, who is personally known to me, or produced _____ as
identification, and he did/did not take an oath. If no type of identification is indicated, the above-
named person is personally known by me.

Notary Public

My Commission Expires:
ACTIVE: 1878859_1